

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JAMIE CLARK, on Behalf of Herself and All  
Others Similarly Situated,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE  
COMPANY,

Defendant.

3:08-CV-00158-LRH-VPC

ORDER

On March 2, 2009, the court entered an order (#50) granting in part and denying in part Defendant's Motion to Dismiss (#26). On August 20, 2009, the court granted Plaintiff leave to file a second amended complaint. The amended complaint asserts a breach of contract claim (Count I) and a claim for breach of duties arising from a confidential or special relationship (Count IV). The complaint also includes claims for breach of fiduciary duty (Count II) and unjust enrichment (Count III), claims dismissed by the court's March 2, 2009, order (#50).

"It is the law of this circuit that a plaintiff waives all claims alleged in a dismissed complaint which are not realleged in an amended complaint." *Forsyth v. Humana, Inc.* 114 F.3d 1467, 1474 (9th Cir. 1997) (citations omitted). In light of this rule, Plaintiff included the dismissed breach of fiduciary duty claim (Count II) and the unjust enrichment claim (Count III) in the second amended complaint. The court need not dismiss these claims a second time, and no further briefing

1 from the parties is required as to these claims.

2 IT IS THEREFORE ORDERED that, pursuant to the parties' stipulation and the court's  
3 order (#86), Defendant shall have ten (10) days from the filing of this order to file its response to  
4 the second amended complaint.

5 IT IS SO ORDERED.

6 DATED this 27<sup>th</sup> day of October, 2009.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE